

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

CHARLES DIAZ,

No. C 08-4744 SI (PR)

Petitioner,

**ORDER DENYING ISSUANCE OF A
CERTIFICATE OF APPEALABILITY**

v.

TOM FELKER, Warden,

Respondent.

The Court denied the habeas petition filed in the above-titled action, declined to issue a certificate of appealability, and entered judgment in favor of respondent on August 30, 2010. On December 9, 2010, petitioner filed an untimely notice of appeal in the Ninth Circuit Court of Appeals. On January 28, 2011, the Ninth Circuit dismissed the appeal for lack of jurisdiction. The appellate court issued its mandate on February 3, 2011. On March 1, 2011, petitioner filed for a rehearing, which the Ninth Circuit denied on March 22, 2011.

On April 15, 2011, petitioner asked this Court under Federal Rule of Civil Procedure 60 to vacate its order denying the petition and the judgment, and re-enter them so as to permit him to file a timely notice of appeal. The Court found no basis for relief and denied the motion on January 18, 2012. Petitioner appealed this denial.

1 The Court of Appeals has remanded the action to this Court for the limited purpose of
2 granting or denying a certificate of appealability. This Court hereby denies a certificate of
3 appealability on grounds that petitioner has not shown that “jurists of reason would find it
4 debatable whether the petition states a valid claim of the denial of a constitutional right and that
5 jurists of reason would find it debatable whether the district court was correct in its procedural
6 ruling.” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). Petitioner may seek a certificate of
7 appealability from the Court of Appeals.

8 **IT IS SO ORDERED.**

9 DATED: May 1, 2012

Susan Illston

SUSAN ILLSTON
United States District Judge

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